Amendment and Response
Applicant: Travis J. Parry et al.
Serial No.: 09/756,356
Filed: Jan. 8, 2001
Docket No.: 10002904-1
Title: WIRELESS RETAIL PURCHASING SYSTEM USING A MOBILE COMPUTING DEVICE

REMARKS

This Amendment is responsive to the Office Action mailed December 3, 2003. Claims 16-21 have been withdrawn from consideration. Claims 8 and 10 have been cancelled. Claims 1-15, and 22-23 were rejected. With this Response, claims 1-4, 6-7, 9, 11-12, 15, and 22-23 have been amended. New claim 24 has been added. Claims 1-7, 9, 11-15, and 22-24 remain pending in the application and are presented for reconsideration and allowance.

Claim Rejections under 35 U.S.C. § 102 and 35 U.S.C. § 103

Claims 1-6, 9-13, 15, 22 and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Treyz U.S. Patent No. 6,587,835 (hereinafter "Treyz"). Claims 7, 8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Treyz U.S. Patent No. 6,587,835 as in the preceding rejection and further in view of Pentel U.S. Patent No. 5,969,968 (hereinafter "Pentel").

Amended independent claim 1 specifies a method of wirelessly electronically performing a near-site retail purchase from a drive-up restaurant using a mobile computing device. The method comprises establishing a direct, wireless communication link between the mobile computing device and the drive-up restaurant upon the mobile computing device entering into proximity to the drive-up restaurant to perform the following actions. The method also comprises using this direct wireless link to receive at the mobile computing device from the drive-up restaurant a menu of food items and displaying the menu on a display of the mobile computing device. The method also comprises transmitting from the mobile computing device a purchase request to the drive-up restaurant to purchase at least one food item based on the menu displayed at the mobile computing device. The method also comprises receiving at the mobile computing device from the drive-up restaurant a confirmation of the requested items and displaying the confirmation of the purchase request on the display of the mobile computing device.

Treyz generally discloses a system for providing shopping assistance between retail units and a handheld computing device, and discloses some interactions with restaurants. See Treyz, e.g., Column 42, lines 28-55; Column 43, lines 9-28; Column 65, lines 3-10. However, in the context of drive-up restaurants, Treyz focuses on the use of handheld

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computing devices for the financial aspects of any transactions with drive-through restaurants. See Treyz Column 4, lines 1-6; see also, Column 9, lines 28-45; Column 10, lines 9-10, 39-44; Column 18, lines 59-67; see also Column 6, lines 45-60 associated with Figure 116 ("handheld computing device...used in an automobile for wireless financial transactions . . such as . . . paying for food at drive-through restaurants, etc.") . See also Column 66, lines 1-34 and Figure 117 which appear to emphasize the limited aspect of payment at drive-through restaurants by handheld computing device (step 1102 "use handheld computing device to pay for gas, toll, parking lot fee, food at drive-through restaurant, etc", step 1104 "maintain records of financial transaction" and step 1106 "generate expense report"). See also Figure 118 of Treyz, (and associated text at Column 66, lines 39-68), which focuses generally on the financial exchange between the handheld computing device and the retailer (see Column 66, lines 46-48 "information 1112 on the nature of the financial transaction and the amount of the transaction"), along with more information about traffic, news, promotions and advertisements in addition to the financial transaction (see Column 66, lines 48-68).

Accordingly, in the context of drive-through restaurants, Treyz does not disclose features of Applicant's amended independent claim 1, including <u>receiving at the mobile computing device from the drive-up restaurant a menu of food items and displaying the menu on a display of the mobile computing device, transmitting from the mobile computing device a purchase request to the drive-up restaurant to purchase at least one food item based on the menu displayed at the mobile computing device, and receiving at the mobile computing device from the drive-up restaurant a confirmation of the requested items and displaying the confirmation of the purchase request on the display of the mobile computing device.</u>

Pentel does not make up for what Treyz lacks. Pentel does not disclose displaying a menu of food items on a mobile computing device, transmitting a purchase request based on the menu displayed on mobile computing device, and receiving and displaying a confirmation of the purchase request on the display of the mobile computing device, as specified in Applicants' amended independent claim 1.

Rather, in Pentel keypad 16 of remote device 12 is used to order items from posted visual menu 30 at drive-up ordering station 14 of restaurant. Posted visual menu 30 is separate from remote device 12 and has the description and order number of various food

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items. See Column 3, lines 23-25. A display 36 is located on ordering station 14, separate from posted visual menu 30, and displays decoded information (e.g. item description and price) from transmitter 24 of remote device 12. See Figure 1a, and Column 3, lines 27-30.

This arrangement disclosed in Pentel would require the user of remote device 12 to be in direct line-of-sight with posted visual menu 30 of ordering station 14 to determine which numeric entries to make on keypad 16 of remote device 12 and to able to receive visual feedback on display 36 at ordering station 14, since no display is available on remote device 12. Accordingly, remote device 12 as used with ordering station 14 in Pentel is not practically capable of near-site purchases as claimed by Applicant, which become possible because the food menu displayed on mobile computing device, from which the order can be placed.

Accordingly, both Treyz and Pentel fail to disclose Applicants' amended independent claim 1.

For these reasons, neither Treyz nor Pentel, alone or in combination, anticipate or make obvious Applicant's independent claim 1, which is believed to be allowable. Claims 2-7, and 9-15 are dependent from amended independent claim 1, and therefore believed to be allowable.

Applicants' amended independent claim 22 specifies a system for identifying and transacting a wireless electronic near-site retail purchase. This system comprises a mobile computing device, a drive-up restaurant, and a direct wireless electronic communication link. The mobile computing device comprises a display and the drive-up restaurant includes a wireless communication module for direct wireless electronic communication with the mobile computing device. The direct wireless electronic communication link between the mobile computing device and the drive-up restaurant is activated automatically between the mobile computing device and the drive-up restaurant upon arrival of the mobile computing device near the premises of the drive-up restaurant. Via the wireless link, the mobile computing device is configured to receive a menu from the drive-up restaurant and display the menu on the display of the mobile computing device, transmit a purchase order of food items to the drive-up restaurant based on the menu displayed on the mobile computing device, receive a confirmation of the purchase order at the mobile computing device from the

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drive-up restaurant and display the confirmation on the display of the mobile computing device.

Applicants' amended independent claim 23 specifies a wireless purchasing applicance. The appliance comprises a mobile computing device including a display and a wireless communication module configured for local wireless communication with a drive-up restaurant. Via the local wireless communication, the mobile computing device is configured to receive a menu of food items from the drive-up restaurant, display the menu on the display, transmit a purchase request to the drive-up restaurant of at least one food item from the displayed menu, and receive a confirmation of the purchase request which is displayed on the display of the mobile computing device.

This claimed system and wireless appliance of claims 22 and 23, respectively, enable a user to make a purchase from a drive-up restaurant without having to be in line-of-sight with any posted menus as required by Pentel, so that an order can be placed before any posted on-site menu 30 and/or display 36 (as in Pentel) is in view. In Applicants' claims 22 and 23, this feature is made possible by a menu of food items from the drive-up restaurant being displayed on mobile computing device, being able to place a purchase request to the drive-up restaurant from mobile computing device based on that menu displayed on mobile computing device, and receiving a confirmation of the purchase request which is also displayed on the mobile computing device.

Neither Treyz nor Pentel disclose these features for a drive-up restaurant as claimed by Applicant.

Accordingly, neither Treyz nor Pentel, alone or in combination, anticipate or make obvious Applicant's amended independent claims 22-23. Accordingly, Applicants' amended independent claims 22-23 are also believed to be allowable.

Allowable Subject Matter

In light of the above, Applicant believes independent claims 1,22, and 23 and claims 2-7, 9, 11-15, and 24, depending therefrom respectively, are in condition for allowance. Allowance of these claims is respectfully requested.

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CONCLUSION

Any inquiry regarding this Amendment and Response should be directed to either James R. McDaniel at Telephone No. (208) 396-4095, Facsimile No. (208) 396-3958 or Paul S. Grunzweig at Telephone No. (763) 878-0099, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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Respectfully submitted,

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CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope address to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this _26th_ day of February, 2004.

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